

[Advisory Opinion 1997-6]

February 20, 1997

MEMORANDUM

TO: [Name1 withheld]
Child and Adolescent Subcommittee
Montgomery County Mental Health Advisory Committee

FROM: Laurie Horvitz, Chair [initialed]

RE: Waiver Request

You have requested a waiver under the Montgomery County Public Ethics Law to permit you to continue as a member of the Mental Health Advisory Committee. For the reasons explained below, the Ethics Commission has determined that it cannot grant your waiver request.

BACKGROUND

You are a member of the Montgomery County Mental Health Advisory Committee. The Mental Health Advisory Committee is established under Section 24-34.¹ The duties of the Mental Health Advisory Committee include evaluating the allocation and adequacy of public funding for mental health services; participating in the development of the local mental health plan and local mental health budget; and identifying the needs of the County mental health system.

You are also a party to a contract dated June 24, 1995 with Montgomery County. The contract requires you to provide certain coordination and technical services to assist the County in meeting its obligations under the Systems Reform Initiative (SRI) grant. According to the Montgomery County Department of Health and Human Services, the SRI grant is funded, at least in part, by the Maryland Department of Health and Mental Hygiene.

DISCUSSION

Two prohibitions in the Montgomery County Code are relevant to your request. Section 24-34(c) provides:

A committee member must not receive direct or indirect monetary benefits from State Department of Health and Mental Hygiene grants or contracts, except local general

¹ Section references are to the Montgomery County Code (1994).

hospitals that contain a clinic or state designated in-patient beds, a local community rehabilitation or housing program, and the representative from the County Mental Health Association. In this section, monetary benefits do not include reimbursement for ordinary expenses, such as travel, or compensation received by a government employee.

Section 11B-52 is also applicable to your situation. That section prohibits a County contractor from employing a public employee. Section 11B-52 further states that, “public employee and employ as used in this section are defined in Chapter 19A.” Section 19A-4 defines a public employee to include any person appointed to a County board, commission or committee whether or not the person is compensated for serving on that body. Section 19A-4 defines employ as engaging in an activity for compensation. Accordingly, the Commission concludes that Section 11B-52 prohibits you from simultaneously serving as a member of the Mental Health Advisory Committee and being a party to a contract with the County without first obtaining a waiver from the Ethics Commission.

The County Code identifies which prohibitions in the County Code the Ethics Commission may waive and the standards governing waiver determinations. Section 19A-8 authorizes the Commission to waive the prohibitions of Chapter 19A, Charter Section 411, Section 11B-51 and Section 11B-52. Section 24-34(c) is not expressly enumerated in Section 19A-8. However, Section 19A-3 provides that, “If any other County statute...relating to conflicts of interest...is more stringent than this law [Chapter 19A, Ethics], the more stringent provision applies.” The Commission has considered whether Section 19A-3 authorizes the Commission to waive Section 24-34(c). The Commission has determined that Section 19A-3 does not expand the waiver authority provided in Section 19A-8. Because Section 19A-8 expressly references certain sections of the County Code, and does not refer to Section 24-34(c), the Commission has concluded that it is without authority to waive the prohibitions of Section 24-34(c). Accordingly, the Commission has not granted a waiver of that Section.

As already noted, Section 19A-8 does authorize the Ethics Commission to waive the prohibition of Section 11B-52 under appropriate circumstances. The Commission may grant a waiver if it finds that:

1. The best interest of the County would be served by granting the waiver;
2. The importance to the County of a public employee performing his or her official duties outweighs the actual or potential harm of any conflict of interest; and
3. Granting the waiver will not give a public employee an unfair advantage over other members of the public.

In light of the clear policy expressed by the prohibition of Section 24-34(c), the Ethics Commission does not find that it is in the best interest of the County to grant you a waiver from the prohibition of Section 11B-52. Accordingly, your waiver request must be denied.

If there are additional issues which you believe the Commission should consider in regard to your request, please let the Commission know.